



**MEMORANDUM**

**To: PLANNING COMMISSION**

**Date: May 8, 2007**

**From: COMMUNITY DEVELOPMENT DEPARTMENT**

**Subject: ZONING AMENDMENT & DEVELOPMENT AGREEMENT, ZAA-05-09/  
DA 07-01: Monterey-Alcini**

**REQUEST**

A request to amend an approved precise development plan on a 3.5-acre site located on the northwest corner of the intersection of Monterey Rd. and Biscaglia Ave. The proposed amendment is to alter the configuration of the 30 multi-family units and the 11,200 sq. ft. of commercial space. Also requested is approval of a project development agreement.

**RECOMMENDATION**

ZAA 05-09: Approve resolution recommending Council approval of the revised development plan.

DA 07-01: Approve resolution recommending Council approval of the development agreement.

Approve resolution containing project development schedule

**BACKGROUND**

In July 2006, the City Council approved a precise development plan which included 12 single-family attached units, 2 single-family detached units, 30 multi-family residential units, 11,200 sq. ft. of ground floor commercial space, 115 space parking lot, a 6,173 sq. ft. park area which contains a 1000 sq. ft. recreation building, a detention pond and a tot lot with three activities and a gazebo.

The proposed 44 unit project is a result of combining two separate side by side RDCS projects (Monterey-Alcini MC 05-05 and Church-Alcini (MC 04-15) into one precise development plan. In July 2006 the Council also approved a development agreement for the 14 single-family attached portion of the PUD located on the east side of the site adjacent to Church St. In June, the Planning Commission approved of a 14-lot tentative map for the single family attached portion of the project

## **DISCUSSION**

**PUD Amendment:** The proposed PUD amendment request affects the westerly mixed use portion of the site. The following table summarizes and compares the proposed PUD plan to the currently approved plan.

<b>General Info.</b>	<b>Approved PUD</b>	<b>Proposed PUD</b>	<b>Reduction in Project Quality</b>	<b>RDCS Point Changes</b>
30 allocations available (5 existing units on site)	30 Multifamily units	31 Multifamily units	No. Increases density without additional allocations needed	No
8-18 Du/Ac allowed	16.39 DU/AC	16.93 DU/AC	No	No
	11,200 sq. ft. retail/com. space	8000 sq. ft. retail/com. space	3200 sq. ft. reduction in retail/commercial space.	No
5 models, 1-3 Bdrms	30, 2-3 bedroom condos.	16, 2 bedroom condos 15, 3 bedroom townhouse condos	No	No
950-1800 sq ft				
2 spaces/2 bdrm unit	60 parking spaces required 114 provided	62 parking spaces required. 92 provided	No	No
Covered spaces not required	26 covered	52 covered	48 fewer spaces available for retail uses.	No
Max. coverage 75%	44 % building coverage	33% building coverage	No	No
Natural & Env. B1c	Preserved large cedar and redwood	Eliminates large trees	Building footprint and site plan adjustment could be made.	Possible -1 pt.
	0 ft. setbacks on Mo. Rd.	10-20 ft. building setbacks on Mo. Rd	Arcade element has been eliminated over commercial fronts	No
Quality of Const. B4a	Has balconies	Has balconies.		No
Lot Layout B5	Varied roof line	Varied roof line		No
Lot Layout B6	3 architectural styles	3 architectural style		No
Lot Layout B6	3 distinct elevations	3 distinct elevations		No
	Trash enclosures provided	No trash enclosure	To provide encl. for retail parking is lost.	No
Livable Communities B7	Well integrated	Well integrated		No
Lot Layout B2a Circulation B5	Recreation Bldg within park area	Recreation Bldg within building	Rec. amenities are more evenly distributed.	+1 pt. +1 pt.

Number of Allocations: The mixed use portion of the PUD (MC 05-05) received 30 allocations for FY 2007-08. The revised PUD increases the number of units by 1 requesting replacement of 1 of the 5 existing units on the site. The four other existing units could also be replaced reducing the number of need allocations to 26. This would allow 4 allocations to move to another downtown or mixed use project.

Unit Type: The revised layout incorporates townhouse type units with enclosed garage space for the units. The applicant has indicated that they would still be a condominium product thus not affecting the project's Housing Types score. No division of the land is proposed.

Parking: The revised plan significantly increases the amount of covered parking which the applicant believes is essential for the sale of condo units. The overall number of spaces provided has decreased from 114 to 92. The number of spaces required is 62 so the project would still exceed the City's minimum parking requirements for the CC-R Mixed Use zoning.

Elevations: Representative elevations of the Monterey and Bisceglia building frontages have been provided. The sketch indicates three variations in style but is lacking detail or call outs for materials and architectural features. As a conditions of the proposed PUD amendment staff is recommending the Architectural and Site Review Board make a finding that the project architectural plans are of equivalent quality to the plans presented with the RDCS application.

Site Plan: A positive change within the revised layout includes the movement of the project Monterey Rd. access further north away from the Monterey/Bisceglia intersection. This however results in the elimination of two significant trees on the site. The revised plan does not address the location of trash enclosures which could result in a minor reduction (4 stalls) of on-site parking. Staff recommends that the ARB review and approve the final location of trash enclosures for the project.

Trees: The over all site contains approximately 45 trees. Fifteen of the trees are listed by the arborist as significant due to their size. Of those 15, nine would be eliminated by the current plan. Two of the nine are listed by the arborist as being in poor health. The project committed to the preservation of the redwood and cedar trees as part of the Natural and Environmental category. The applicant could revise the project layout to separate the building on Monterey Rd. and move the site access south per the currently approved PUD plan (attached for reference). Or the building footprint can be reconfigured to create a plaza/entry area at the same location as the trees. The project could also commit to retaining other trees by strategically locating planter islands and some other minor reconfiguration of the proposed building footprints. Staff recommends as a condition of the zoning amendment approval that the applicant work with staff, project arborist and the Architectural and Site review Board to preserve as many of the existing trees as possible. Given the number of the trees on the property, this effort would allow the project to maintain the 1 point under the Natural and Environmental Category.

**Recreation Amenities:** The previous PUD plan proposed to include the 1000 sq. ft. recreation building within the open space park area to be shared by both projects within the PUD. The revised plan proposes to move the recreation building into the mixed use building along Monterey Rd. This modification would make the project recreation element more accessible to the mix-use residents but less accessible for the project residents on Church St. side of the project. To assure shared use of the amenities, the PUD (and Dev. Agreement) requires a single HOA so residents have access to both the park and recreation buildings.

Overall, the revised development plan is of the same quality as the currently approved PUD. Further adjustments to the revised plan are recommended to fulfill tree preservation and design quality commitments made during the RDCS scoring. Staff recommends approval of the amended plan subject to the conditions within the resolution.

**Development Agreement:** The applicant is requesting approval of the project Development Agreement. Project development agreements are required as a formal contract between the developer and the City. The Development Agreement formalizes the commitments made during the Measure C process and establishes the development schedule for the project. The project specific commitments are identified in Paragraph 14 of the Development Agreement.

The project Development Agreement has been prepared and is attached as Exhibit A of the approval resolution. The Measure C commitments are within the development agreement and development schedule is contained with a separate resolution.

**Attachments:**

1. Approved Precise Development Plan
2. Proposed Precise Development Plan
3. Resolution recommending approval revised PUD
4. Resolution recommending approval of the Dev. Agrmt.
5. Resolution approving project development schedule.

## **RESOLUTION NO. 07**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF AN AMENDMENT TO A RESIDENTIAL PLANNED DEVELOPMENT LOCATED ON A 3.5 ACRE SITE ON THE NORTHEAST CORNER OF THE INTERSECTION OF MONTEREY RD. AND BISCEGLIA AVE. (APNs 817-01-061, 062, 063 & 064)**

**WHEREAS**, such request was considered by the Planning Commission at their regular meetings of May 8, 2007 at which time the Planning Commission recommended approval of zoning amendment application ZAA-05-09: Monterey-Alcini; and

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

**SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

**SECTION 3.** An environmental initial study has been prepared for this project and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration was filed with the initial zoning application.

**SECTION 4.** The Planning Commission finds that the proposed amendment to the PUD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.

**SECTION 5.** The Planning Commission hereby recommends approval of an amended precise development plan for the 1.8 acre mixed use portion of the PUD as contained in that certain series of documents date stamped December 14, 2006 and May 3, 2007, on file in the Community Development Department, entitled "Monterey Station" prepared by MH Engineering and Dahlin Group. These documents show the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project. These documents shall be consistent with the following modifications and conditions of approval:

1. The Architectural and Site Review Board shall make a finding that the final project architectural plans are of equivalent quality to the plans presented with the RDCS application and meeting the RDCS commitments contained within the project development agreement.

2. The applicant shall work with staff, the project arborist and the Architectural and Site review Board to preserve as many of the existing trees as possible.
3. The final location of trash enclosures shall be reviewed and approved by the ARB.
4. Any common area landscape improvements not completed by MC 04-15: Church-Alcini shall be installed by MC 05-05 and all common area must be maintained under a single HOA

**SECTION 6. Severability.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of the Ordinance to other situations.

**PASSED AND ADOPTED THIS 8th DAY OF MAY, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:**

**NOES: COMMISSIONERS:**

**ABSTAIN: COMMISSIONERS:**

**ABSENT: COMMISSIONERS:**

**ATTEST:**

**APPROVED:**

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**FRANCES O. SMITH, Deputy City Clerk**

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**ROBERT J. BENICH, Chair**

**RESOLUTION NO.**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF MORGAN HILL APPROVING A  
DEVELOPMENT SCHEDULE FOR APPLICATION  
MC-05-05: MONTEREY-ALCINI (APNS 817-01-062 &  
063)**

**WHEREAS**, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 30 building allotments for application MC-05-05: Monterey-Alcini; and

**WHEREAS**, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System (RDSCS), Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

**WHEREAS**, prior to October 25, 2006, Development Agreements incorporated a development schedule to ensure projects comply with the statutory deadlines of the RDSCS; and

**WHEREAS**, to extend deadlines outlined in the development schedule, a property owner/developer was required to file an application to amend the Development Agreement which required public hearings and adoption of an ordinance by the City Council; and

**WHEREAS**, rather than continuing to require developers to go through a legislative process to amend their development schedules, the Planning Commission adopted Policy PCP-06-01 which allows development schedules and extension of time requests to be approved and adopted by Planning Commission Resolution on consent calendar; and

**WHEREAS**, PCP-06-01 became effective on October 25, 2006; and

**WHEREAS**, the development schedule for application MC-05-05: Monterey-Alcini was considered by the Planning Commission at their regular meeting of May 8, 2007, at which time the Planning Commission approved the development schedule.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES  
RESOLVE AS FOLLOWS:**

**SECTION 1. ADOPTION OF DEVELOPMENT SCHEDULE.** The Planning Commission hereby adopts the Development Schedule for MC-05-05: Monterey-Alcini attached to this Resolution as Exhibit A.

**Resolution No.**  
**Page 2**

**PASSED AND ADOPTED THIS 8<sup>TH</sup> DAY OF MAY 2007, AT A REGULAR MEETING  
OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:**

**NOES: COMMISSIONERS:**

**ABSTAIN: COMMISSIONERS:**

**ABSENT: COMMISSIONERS:**

**ATTEST:**

**APPROVED:**

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**FRANCES O. SMITH, Deputy City Clerk**

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**ROBERT J. BENICH, Chair**



**EXHIBIT "A"**

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**DEVELOPMENT SCHEDULE MC-05-05: MONTEREY-ALCINI  
FY 2007-08 (30 allocations)**

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- |   |            |
|---|------------|
| <b>I. ZONING APPLICATION</b>                      |            |
| Zoning Amendment Application Filed:               | 12-14-2006 |
| <b>II. SITE REVIEW APPLICATION</b>                |            |
| Application Filed:                                | 09-14-2007 |
| <b>III. FINAL MAP SUBMITTAL</b>                   |            |
| Map, Improvements Agreement and Bonds:            | 10-31-2007 |
| <b>IV. BUILDING PERMIT SUBMITTAL</b>              |            |
| Submit plans to Building Division for plan check: | 12-31-2007 |
| <b>V. BUILDING PERMITS</b>                        |            |
| Obtain Building Permits:                          | 03-31-2008 |

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 15 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

**RESOLUTION NO.**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF MORGAN HILL RECOMMENDING  
APPROVAL OF DEVELOPMENT AGREEMENT  
APPLICATION DA-07-01: MONTEREY-ALCINI FOR  
APPLICATION MC-05-05: MONTEREY-ALCINI (APNS  
817-01-062 & 063)**

**WHEREAS**, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

**WHEREAS**, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

**WHEREAS**, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded thirty) building allotments for application MC-05-05: Monterey-Alcini; and

**WHEREAS**, said development agreement request was considered by the Planning Commission at their regular meeting of May 8, 2006, at which time the Planning Commission recommended approval of development agreement application, DA-07-01: Monterey-Alcini.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES  
RESOLVE AS FOLLOWS:**

**SECTION 1. ADOPTION OF DEVELOPMENT AGREEMENT.** The Planning Commission hereby recommends to the City Council, adoption of the Development Agreement for MC-05-05: Monterey-Alcini attached to this Resolution as Exhibit A.

**PASSED AND ADOPTED THIS 8<sup>TH</sup> DAY OF MAY 2007, AT A REGULAR MEETING OF  
THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:**

**NOES: COMMISSIONERS:**

**ABSTAIN: COMMISSIONERS:**

**ABSENT: COMMISSIONERS:**

**ATTEST:**

**APPROVED:**

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**FRANCES O. SMITH, Deputy City Clerk**

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**ROBERT J. BENICH, Chair**

**RECORD AT NO FEE PURSUANT TO  
GOVERNMENT CODE SECTION 6103**

Recorded at the request of  
and when recorded mail to:

City of Morgan Hill  
Community Development Department  
17555 Peak Avenue  
Morgan Hill, CA 95037

**RESIDENTIAL DEVELOPMENT AGREEMENT**

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between **The Alcini Partnership**, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

**RECITALS**

This Agreement predicated upon the following facts:

- A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;
- B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;
- C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;
- D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);
- E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;
- F. On \_\_\_\_\_, 2007, the City Council of the City of Morgan Hill adopted Ordinance No. \_\_\_\_\_, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on \_\_\_\_\_, 2007.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On February 16, 2006 the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MC-05-05: Monterey-Alcini, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of 31 condominium units  
as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Mixed Use and zoning classification of PUD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

That shown on the Precise Development Plan as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Precise Development Plan as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following School features in the development:

(i) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

(ii) Property owner will install off-site pedestrian safety improvements or traffic safety improvements near a MHUSD school valued at \$3,300 per unit, or any other improvements equal to \$3,300 per unit to be determined by the Morgan Hill Unified School District.

(iii) Any proposed pedestrian and traffic safety improvements cannot be redundant of improvements committed to in other categories.

(iv) Project provides a 1000 sq. ft. on-site community room that is specifically designed for and can be used for after school educational programs such as homework tutoring, music lessons, etc., and is available for use at no cost to the Morgan Hill Unified School District. The Morgan Hill Unified School District's Director of Facilities will coordinate the District use of the facility with the property manager to ensure that a minimum space of 960 square feet is made available for after school activities. Future points may be withheld or payment of such costs charged to the developer if obligation isn't met..

(i) Property Owner agrees to include the following Open Space improvements in the development:

(i) All parks, open space and recreation element within the project will be maintained by a single neighborhood homeowners association which over sees all 45 units within the PUD. All residents within the PUD shall be provided access to all amenities.

(ii) Project has committed to pay double the per unit Downtown Open Space Amenity fee in an amount equal to the most recent adjusted open space fee. The amount of the open space fee shall be based on the average cost per dwelling unit for an equivalent Transferable Development Credit TDC, and will be collected on a per unit basis at the time of the issuance of a building permit. The current open space rate is \$36,880 per TDC which equals \$1,475.20 per unit (based upon the cumulative project to date ratio of one TDC for every twenty-five dwelling units proposed.) The open space fee shall be adjusted annually in accordance with the annual percentage increase or decrease in the median price of a single-



family detached home in Santa Clara County. The base year from which the annual percentage change is determined shall be January 1, 2005.

(j) Property Owner agrees to include the following **Public Facility** features in the development:

- (i) Project will meet all standard requirements for design and construction of public facilities.
- (ii) The project drainage shall be consistent with the City's storm drain system.
- (iii) The project will provide storm water mitigation for the adjacent "Rancho del Pueblo", an adjoining 14 unit, 1.6 acre residential development.
- (iv) Contribute \$1100/unit into offsite storm drain fund.
- (v) Applicant agrees to provide public facilities or pedestrian improvements per stated specifications up to \$4400/unit for the Monterey Rd frontage opposite the project on the West side or from the city approved list.
- (vi) Applicant will contribute \$1,100 per unit to the Capital Improvements Program Fund

(k) The Property Owner agrees to provide the following **Park and Recreation** improvements:

- (i) Project will provide a continuous and unrestricted mid block pedestrian connections through the buildings that provides access to public or private open space areas and plazas.
- (ii) In addition to payment of standard park fees, the project will pay the lesser of double the required in lieu park fees up to \$ 3300 per unit.
- (iii) A pathway will be provided which extends from the east property boundary to the Monterey Road frontage at the north end of the site. This will provide access as well to the development on the east PUD.
- (iv) As a vertical mixed-use project the developer will pay double the downtown open space amenity fee. The amount of the fee shall be equal to the most recent adjusted open space fee.

(l) Property Owner agrees to include the following **Housing Types & Housing Needs** in the development:

- (i) Project shall provide 75% of the units affordable to less than moderate income households and 25% of the units affordable to less than median income households.

- (ii) The project shall provide 1, 2 and 3 bedroom units with each bedroom category representing over ten percent of the 31 total units proposed.

(m) Property Owner agrees to include the following **Quality of Construction** features in the development:

- (i) All homes will have EPA "Energy Star" labeled windows with low-e coatings and vinyl or metal frames,
- (ii) Installation of a high efficiency gas furnace of 90 percent efficiency rating or greater in all dwelling units.
- (iii) At least 60 percent of the dwelling units in the project must be dual-zoned and all units must include the installation of high efficiency gas furnaces with 90 percent efficiency rating or greater.
- (iv) Installation of air conditioning units with high efficiency condensing unit with a SEER rating of 12 or higher. Must be installed in more than 60 percent of the dwelling units in the project.
- (v) Installation of a high efficiency gas furnace with an efficiency rating of 90 percent or greater, in all units
- (vi) Recirculating hot water system with demand pumping.
- (vii) Installation of cast-iron drainage pipe and piping insulation between floors for sound reduction of plumbing.
- (viii) Installation of future ready wiring concepts such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and high speed computer access, and CAT5R or equivalent for telephone lines.
- (ix) Class A roof covering
- (x) Glued and screwed sub-floors, insulation of interior walls for sound.
- (xi) TJI floor joists.
- (xii) Pre-plumb gas lines to dryer along with 220 volt outlet.
- (xiii) Buildings will be designed to use at least two different roof lines and two different pitches throughout the project, i.e. gable, hipped, dormers, Mansard, etc. Balconies are integrated into the design of the building. Each unit will have a balcony that is visual at the project frontages along Biscaglia Ave. and Monterey Road.

- (xiv) Variation in architectural styles shall be present on all four sides of the buildings. A high level of detail for each style shall be provided which includes numerous trim pieces and the inset window details.
- (xv) A four foot rear setback variation shall be provided between units.
- (xvi) Common walls between units will be double stud with several layers of sheetrock to provide an STC rating of 60.
- (xvii) Mechanical units will be placed in the roof well and no sound will be heard from ground level.
- (xviii) A range of colors shall be provided to enhance architectural details.

(n) improvements:

The Property Owner agrees to provide the following **Circulation**

- (i) Project shall contribute \$2200/unit for the Monterey Rd frontage improvements needed on the West side of Monterey Rd opposite the project.
- (ii) Applicant agrees to replace existing broken sidewalks and asphalt pathways along the west side of Monterey Road, north of Spring Avenue to Ciolino Drive at an additional \$1,100 per unit.
- (iii) The project will provide bicycle parking with racks at convenient locations near building entrances and bus stops to satisfy this criterion.
- (iv) Provides for dedication and improvement of extensions to existing streets or shared parking lots outside of the project boundaries.
- (v) The cost of the offered dedication and public improvements shall be equal to or greater than \$1100 per unit.
- (vi) The project will provide bicycle parking with racks at convenient locations near building entrances and bus stops.

(o) improvements:

The Property Owner agrees to provide the following **Safety and Security**

- (i) Provides fire escape ladders for upper floor bedrooms and one mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space, and one additional extinguisher for each additional 1,500 square feet of floor space or fraction thereof.
- (ii) Provides a first aid kit with a poison control document to be installed in the kitchen area of the home.
- (iii) Provide outdoor lighting to meet all police department specifications.

- (iv) Install illuminated address numbers for each unit and painted reflective curb numbers where possible.
- (v) Noncombustible siding is used on at least 75 percent of the total units and comprises at least 50 percent of the siding of an individual unit.
- (vi) Installation of an intrusion, fire alarm and heat detector system, monitored by a central station with a one year pre-paid contract with the home purchase.
- (vii) Project will provide deadbolts for each unit entry.
- (viii) Provides residential fire sprinkler systems according to NFPA Chapter 13D specifications.
- (ix) Neighborhood Emergency Preparedness Program administered through a homeowners association or central property management.
- (x) Hardwired carbon monoxide detection device or devices with battery backup. The installations of the devices are to be located per manufacturer's requirement with at least one detector per floor of the residence.
- (xi) The developer shall include provisions in the Convents, Conditions and Restrictions (CC&R's) of the Homeowner's Association which directs a Board representative to the City of Morgan Hill Police Department's Community Service Officer to enact a neighborhood watch program to be established as part of the first phase of the development. For rental projects, neighborhood watch programs shall be administered through a central property management.

- improvements:
- (p) The Property Owner agrees to provide the following **Landscaping**
    - (i) Twenty-four inch box-size trees from a city approved list, with a minimum height of nine feet and a spread of three to four feet. The box-size trees will be provided within the development at a ratio of one box-size tree per ten trees provided with the landscape area to be installed by the developer. The one box size tree per ten trees calculation does not include street trees.
    - (ii) Sufficient planting shall be provided around all necessary and appropriate group parking to achieve shading and visual screening as viewed from the public street.

- (iii) Varied front yard landscaping plans are installed by the developer.
- (iv) Deciduous trees will be planted along the south facing side of homes or buildings.
- (v) All street trees are twenty-four inch box trees from the city approved list.
- (vi) Project provides street trees consistent with the Street Tree Master Plan that addresses tree selection, location of trees on each lot, proper tree spacing, and preservation of any existing trees.
- (vii) Drought tolerant grasses are used for lawn areas and no more than twenty-five percent of the landscape area is covered with lawn. The twenty-five percent lawn coverage calculation is exclusive of landscape area within parks.
- (viii) Automatic irrigation systems utilize separate valves and circuits for trees; shrubs and ground covers; and lawn areas. Minimum of three separate valves required. A separate valve shall be provided for the following areas: front lawn, rear lawn, and for trees, shrubs and groundcover (combined) where viable. If trees, shrubs, and groundcover cannot be combined under 1 valve, a separate valve for trees shall be provided, resulting in a minimum of 4 separate valves required. Water conserving irrigation system is also used within the development, i.e., drip irrigation.
- (ix) The landscape to be installed by the developer will include hardscape coverage such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least fifteen percent of the landscape area. Pedestrian walkways across circulation aisles are not included in this item.
- (x) For at least 75% of all plant material, uses water conserving plants contained on the Selected Plant List, Appendix A of the City Water Conservation Landscape Guide.
- (xi) Project will provide a separate water source by drilling a well to irrigate common area landscape areas that are maintained by a homeowners association.
- (xii) Landscaping shall be installed on all areas visible from public and private rights-of-way.

(q) The Property Owner agrees to provide the following **Natural and Environmental** improvements:

- (i) The project will meet the requirements for minimal grading which is considered a fill or excavation of less than two feet in depth (three feet is acceptable for detention ponds).
- (ii) Project will preserve as many existing trees as possible.
- (iii) The project will avoid the use of soundwalls.
- (iv) Dry wall is source separated and recycled.
- (v) Wood waste is source separated for recycling or composting.
- (vi) Cardboard containers and boxes are source separated and recycled.
- (vii) Uses certified Forest Stewardship Council (FSC) plywood.
- (viii) Uses building insulation with minimum 25% recycled content.
- (ix) Uses light exterior roof colors to reflect the sun's heat.
- (x) Uses low to zero emission volatile organic compounds (VOC) and adhesives

(r) The Property Owner agrees to provide the following **Livable Community** improvements:

- (i) Project will provide low-maintenance on-site walkways and on-site bike paths throughout the development which are not redundant of City sidewalks.
- (ii) Project will provide access from the project frontage retail/commercial entries to within the site to access parking and residential access points
- (iii) Project will construct a ( bus shelter, benches, reinforced street sections or bus pullout area) **and** these improvements are located on an approved or planned Valley Transportation Agency (VTA) transit route and accepted by the VTA for maintenance.
- (iv) Project agrees to install and replace sidewalks along the west side of Monterey Road, north of Spring Ave to Ciolino Drive with an additional \$1,100 per unit, beyond Circulation Efficiency 6.c. or any other City preferred improvement at the same rate.

(v) Project will provide access to stores, services, schools, employment areas by constructing sidewalks where they do not currently exist within a quarter mile of the development. The cost of the sidewalk improvements shall be equal to or greater than \$1100 per unit.

(s) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(t) The project shall provide the following information, by address for each unit, to the Community Development Department:

- |       |                        |
|-------|------------------------|
| (i)   | Date of sale           |
| (ii)  | The number of bedrooms |
| (iii) | The final sales price  |

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued; rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.



22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:                      Community Development Department  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

With a copy to:                              City Clerk  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

Property Owner:                              Alcini Partnership  
Ray Alcini  
1518 Padres Dr.  
San Jose, CA 95125

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefore, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

\_\_\_\_\_  
Janet Kern  
City Attorney

\_\_\_\_\_  
J. EDWARD TEWES, City Manager

Attest:

\_\_\_\_\_  
IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,  
MUST BE ACKNOWLEDGED BY A NOTARY)**

**EXHIBIT "A"**

**DEVELOPMENT ALLOTMENT EVALUATION**

**MC-05-05: Monterey-Alcini**

(See Entire Documents on File in the  
Community Development Department - City Hall)  
CITY OF MORGAN HILL

**EXHIBIT "B"**

**DEVELOPMENT SCHEDULE MP-05-05: Monterey-Alcini**

**28 allocations for Fiscal Year 2007-2008**

**I. COMMENCE CONSTRUCTION:**

FY 2007-08 (30 units)

06-30-08

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 15 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

**EXHIBIT "C"**

**LEGAL DESCRIPTION**

**MC -05-05: Monterey-Alcini**

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

**PARCEL ONE:**

Parcel 1, as shown on that certain Parcel Map, which Parcel Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on September 7, 2000 in Book 731 of Maps, at pages 22 and 23.

**PARCEL TWO:**

Parcel 2, as shown on that certain Parcel Map, which Parcel Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on September 7, 2000 in Book 731 of Maps, at Pages 22 and 23.

APNS 817-01-062 & 063